Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

COMMENTS OF CENTURYTEL, INC.

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October 25, 2006

SUMMARY

CenturyTel urges the Commission to reform intercarrier compensation in a rational manner that puts consumers first and is based on a clear set of policy objectives. An essential part of that objective is enabling network providers to meet consumers' changing needs and the growing demands they place on public telecommunications networks, without widening the divide between the telecommunications "haves" and "have nots." Only reforms that provide incentives for network investment while keeping end-user rates affordable will help achieve this fundamental goal. Furthermore, any reform plan that undermines the ongoing viability of the universal service program should not be embraced. Any perceived benefits of reform will be quickly forgotten if consumers and policymakers are forced to reconcile the impacts of the plan with degradation in competitive choice, service quality, reliability, availability, or affordability.

The "Missoula Plan" presents a thoughtful framework for reform, and favorably addresses many of the problems associated with the present system. For example, the proposal offers a reasonable solution to the problem of "phantom traffic" and includes some positive reforms to universal service. The Missoula Plan recognizes the importance of such core concepts as unifying inter-carrier rates, eliminating arbitrage of networks, and creating a revenue restructure mechanism, and it attempts to acknowledge the differences between rural and non-rural carriers. The Commission must also recognize that the Missoula Plan falls short in achieving many other needed reforms, and that there is still room and time for improvement. For this reason, CenturyTel encourages the Commission to take the framework of the Missoula Plan and complete the reform process by improving on certain key concepts. Among other things, the Missoula Plan would reduce rates dramatically over just twenty-four months, shift significant amounts of intrastate intercarrier compensation to consumer-based funding mechanisms, and

permit substantial increases in the subscriber line charge (SLC), all without requiring carriers to pass their savings on to end-users. The cumulative effect of these and other changes proposed in the Missoula Plan is to allow certain carriers to benefit at the expense of the consumers whose needs should be at the forefront of reform.

CenturyTel supports those aspects of the Missoula Plan that are balanced and will help consumers; CenturyTel offers certain refinements to increase the consumer benefits and better achieve the goals of the Communications Act. CenturyTel believes the proper ordering of regulatory decisions on an incremental basis will lay a firmer foundation for lasting intercarrier compensation reform with meaningful consumer benefits.

First, CenturyTel proposes that the Commission immediately take the following discrete actions to bring much-needed stability to the industry and benefits to consumers:

- Implement the Missoula Plan's "phantom traffic" proposal, which would limit the still-growing number of minutes that cannot be billed due to incomplete or incorrect identification information and allow the Commission to quantify more accurately the amount of intercarrier compensation at stake.

- Conclude its longstanding rulemaking on the methodology for assessing universal service contributions, and broaden the base of contributors.

- Make its guidelines for the designation of eligible telecommunications carriers (ETCs) mandatory.

These actions are already well within the Commission's grasp, and can be implemented while the Commission is considering further reform—and in particular, before it allows potentially enormous revenue shifts.

Once the Commission has addressed these prerequisites to reform, it can proceed to address certain intercarrier compensation issues that are among the most problematic today. CenturyTel proposes that this first stage of reform take place over a five-year period, with most of the changes occurring in the first three years. Under CenturyTel's framework, the Commission would adopt rules:

- Establishing only two divisions of carriers: (i) the mandatory price cap carriers and all non-ILEC service providers; and (ii) all other ILECs (referred to herein as "covered rural telephone companies" or CRTCs).
- Unifying rates for all types of two-way traffic, pursuant to a simplified structure in which CRTCs, by the end of three years, would choose a target rate from among several rate bands (which would remain in place for the remainder of the five-year plan).
- Eliminating the interim rules requiring payment of intercarrier compensation to entities that only terminate calls on behalf of customers.
- Limiting SLC cap increases for CRTCs to no more than $0.50 in any year, up to $1.50 over a three-year period, with no further increases permitted during the five-year plan.
- Making support mechanisms available only to carriers that have received such funding due to reductions in their inter-carrier charges.
- Conditioning points of interconnection that CRTCs must establish, such that CRTCs are not required to undertake new construction or to provide transport outside the contiguous parts of their service areas.

At the end of the five-year plan, the Commission should assess the impact of those changes on consumer rates, availability of services, innovation, network investment, and other appropriate indicia. After careful study, the Commission can decide whether and to what extent further reform is necessary. By limiting its initial phase of reform to these significant but measured steps, the Commission could achieve a win-win outcome for both consumers and the industry by resolving the most serious and urgent problems associated with intercarrier compensation reform without excessive disruption to consumers. Proceeding along these lines will allow reforms to unfold in a manner that preserves and enhances the ubiquity of the nation's telecommunications networks.

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On behalf of its operating subsidiaries, CenturyTel, Inc. ("CenturyTel") respectfully submits its comments on the intercarrier compensation reform plan filed by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation, referred to herein as the "Missoula Plan."[1] CenturyTel operates both non-rural price cap study areas and rural rate-of-return study areas. As a result, CenturyTel is classified as a "Track 2" carrier under the Missoula Plan, and these comments accordingly focus on the Missoula Plan's impact on this category of carriers as well as the customers they serve.

I. INTRODUCTION: PUTTING CONSUMERS FIRST IN THIS PROCEEDING

The Commission and the industry have devoted considerable resources to examining various reforms of the intercarrier compensation system. The greatest challenge in this endeavor seems to be identifying and implementing changes to the present system that will actually benefit consumers. This priority reflects the central mandate of the Telecommunications Act of 1996, that the Commission promote the universal availability of advanced telecommunications capability to all Americans.[2] That directive requires the Commission to ensure that end-user rates are affordable, but there is more to the Commission's mission. A truly

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[1] *See* Public Notice, *Comment Sought on Missoula Intercarrier Compensation Reform Plan*, DA 06-1510, CC Docket No. 01-92 (rel. July 25, 2006).

[2] *See* 47 U.S.C. §§ 151, 157, 254; *id.* § 157 note.

consumer-oriented reform plan must also ensure that network providers—particularly those with carrier-of-last-resort responsibilities—retain the incentive and ability to invest in and upgrade their facilities in response to consumers' growing demands and evolving needs.

While these concepts are not new,[3] they continue to be relevant and increasingly urgent. The growing demand for advanced services already is straining existing networks, particularly in rural areas. CenturyTel has made broadband services available to 75 percent of its customers, but dial-up access continues to be the only link to the Internet for millions of Americans.[4] Even as more customers gain access to DSL, cable, satellite, and wireless alternatives, a wide variety of providers and technologies remain dependent on the public switched network provided by the ILEC, especially in rural markets. In many CenturyTel markets, for example, both wireless carriers and CLECs rely on CenturyTel facilities to complete their transmissions to and from their customers. Moreover, CenturyTel DSL provides the essential broadband link to customers for access to many competitive services such as voice-over IP (VoIP) telephony services. Consumers seek diverse bundles of advanced services at competitive prices. The reforms undertaken in this proceeding are likely to stimulate even more network usage by forcing providers into a flatter (less usage sensitive) pricing structure. Such change only makes sense if the underlying networks are capable of supporting these increased

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3 *See, e.g.*, *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 ¶ 31 (2005) ("*Intercarrier Compensation FNPRM*") ("[A]ny new approach should encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition. Indeed, one of the Commission's most important policies is to promote facilities-based competition in the marketplace.") (citations omitted); *see also Developing a Unified Intercarrier Compensation Regime*, Comments of CenturyTel, Inc., CC Docket No. 01-92, at 1-4 (filed May 23, 2005) ("CenturyTel 2005 Comments"); *Developing a Unified Intercarrier Compensation Regime*, Reply Comments of CenturyTel, Inc., CC Docket No. 01-92, at 12 (filed July 20, 2005) ("CenturyTel 2005 Reply Comments").

4 *See infra* section III.B.1 (noting evidence that dial-up Internet usage is increasing in rural markets).

demands and consumers can bear the rate increases that will make them possible. If consumers cannot afford these services, this network investment will not be made.

CenturyTel has been an active participant in developing proposals in this docket,[5] and it worked hard with other stakeholders from all industry segments to reach compromise with AT&T and others on a new reform plan. But despite those efforts, the final product of the latest set of negotiations—the "Missoula Plan"—does not reflect a balance of consumer or industry interests. In fact, the Missoula Plan would disproportionately burden the residential and small business customers served by rural carriers such as CenturyTel.[6] Because the Missoula Plan contemplates many simultaneous changes without a meaningful transition period, the full extent of the damage may not be known for years, yet the consequences may prove disastrous.

The Commission should not adopt a reform plan that is likely to disadvantage or advantage any single segment of consumers. Rather, it should take an incremental approach that affords a reasonable period of time to assess the impact of its rule changes on consumers, networks, and competition overall. Below, CenturyTel proposes a moderated transition from the existing regime to a new intercarrier compensation model. CenturyTel believes that this proposal is better designed to ensure that consumers will benefit from intercarrier compensation reform.

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5 *See* CenturyTel 2005 Comments at 3 (describing some of CenturyTel's efforts in connection with intercarrier compensation reform).

6 CenturyTel has documented that rural carriers tend to have higher proportions of residential customers and lower proportions of medium and large business customers than non-rural markets. *See, e.g., id.* at 12, 14 n.25. Further, rural consumers tend to have lower incomes and lower net worth than their urban counterparts. *See id.* at 14-15. The impact of any rule that increases residential rates therefore hits rural markets especially hard.

II. THE MISSOULA PLAN: A FRAMEWORK FOR REFORM

The Missoula Plan reflects a determined attempt to resolve all outstanding intercarrier compensation questions in a manner that accounts for all types of carriers and traffic in one sweeping reform initiative. This broad goal is commendable. One of the original purposes of this rulemaking was to minimize arbitrage of networks for competitive gain. While CenturyTel believes that incremental reform is the more prudent approach, the Missoula Plan does offer a useful framework for some issues. For example, the Plan recognizes the need to alleviate the problem of "phantom traffic"—traffic that is either inaccurately or inadequately labeled and thus cannot be billed properly—and sets forth rules for doing so that generally reflect industry-wide compromise.[7] In addition, the Missoula Plan recognizes and retains, to some degree, the distinction between rural and non-rural markets, and includes provisions that are intended to ensure financial support for rural areas.[8] The Missoula Plan also acknowledges important principles such as the utility of incentive regulation in reforming rates,[9] and the difficulty of pursuing regulatory reform without state conformity.[10] The Missoula Plan recognizes the need to resize the high-cost loop fund and promote investment in rural communications infrastructure.[11] CenturyTel supports these aspects of the Missoula Plan.

Notwithstanding some of the positive themes it contains, the Missoula Plan cannot provide a sound basis for reform of intercarrier compensation—especially for those

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7 *See, e.g.*, Missoula Plan Executive Summary at 9-10.

8 *See, e.g.*, *id.* at 12-13.

9 *See, e.g.*, *id.* at 13-14.

10 *See, e.g.*, *id.* at 2, 9 n.12.

11 *See, e.g.*, The Missoula Plan for Compensation Reform at 77-79 (listing reforms proposed in the Missoula Plan that include resizing the high-cost fund and expanding the "safety valve"). *But see infra* section III.A.2 (noting the problem of portability of support to CETCs).

companies that have been classified into Track 2—without additional modifications.[12] The Missoula Plan's ambitious reach results in a complex and inevitably unwieldy system that cannot reasonably be expected to bring the stability that the industry so urgently requires. Moreover, the Missoula Plan places far too great a burden on consumers, without addressing some of the most pressing arbitrage problems that exist in the current system. These flaws likely would have a profoundly negative effect on residential and small business consumers, particularly in rural and high-cost areas.

First, the Missoula Plan fails to unify intercarrier charges in a reasonable manner. Departing from the Commission's stated view that "any new plan should be simple to administer,"[13] the Missoula Plan sets forth a complex, multi-tiered system in which intercarrier rates vary both between and within three different classes of carriers. Track 2 and Track 3 carriers are subject to different target rates, while Track 2 carriers are further divided based on their regulatory classification.[14] The rates for Track 3 carriers are not unified at all under the Missoula Plan.[15] The potential for unnecessary confusion arising from this scheme is obvious. But perhaps even more problematic are the inequities that this lack of parity would produce among carriers. The Missoula Plan's target termination rate of $0.0005 per minute appears to be an arbitrary rate, bearing no relation to current cost-based rates. It would not adequately compensate all Track 2 carriers for their switching and termination costs, and the 24-month

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12 *See, e.g.*, Missoula Plan Meeting, Presentation by Wisconsin Public Service Commission Staff, Sept. 22, 2006, at 11-15, attached to Letter from Karen Brinkmann, Counsel to CenturyTel, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-92, 96-45 (filed Sept. 28, 2006) ("Wisconsin PSC Staff Presentation") (describing the negative impact of the Missoula Plan on Track 2 carriers).

13 *Intercarrier Compensation FNPRM* ¶ 61.

14 Missoula Plan Executive Summary at 4-6.

15 *Id.* at 6.

period for achieving it would most probably throw small and medium-sized carriers into turmoil.[16] Moreover, given this target rate, Track 2 carriers such as CenturyTel would bear a disproportionate amount of the total revenue shift contemplated by the Plan.[17] This financial burden is compounded by the fact that the Track 2 carriers lack the pricing flexibility enjoyed by other carriers, as even the Missoula Plan's authors are forced to concede.[18] Indeed, Track 2 carriers lack the size and scope of the Bell Operating Companies (BOCs), who are better positioned to sustain a revenue shift without raising rates. By forcing Track 2 carriers to incur the brunt of intercarrier compensation reform through rapid, drastic access rate reductions (combined with significant end-user rate increases, as discussed below), the Missoula Plan would substantially impair their ability to invest further in rural markets.

Second, the Missoula Plan fails to adequately protect residential and small business customers from rate shock, especially those in rural and high-cost areas. It is generally agreed that carriers should be allowed to make up for any reductions in their intercarrier payments through a combination of direct subscriber line charge (SLC) increases and increased

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16 Indeed, because the end-office termination charge is capped at $0.0005, *see* The Missoula Plan for Intercarrier Compensation Reform at 13, the Missoula Plan's uniform terminating rate effectively puts Track 2 carriers at bill and keep, and has no basis as a sustainable rate.

17 For example, CenturyTel estimates that it alone would be required to shift approximately 60 percent of its switched access revenues to the replacement mechanism and end-user charges. And as the Wisconsin Public Service Commission Staff has noted, Track 2 carriers in that state would be required to undertake a shift of at least that amount. *See* Wisconsin PSC Staff Presentation at 13. In fact, the Staff has projected that Track 2 carriers will be eligible for far less support through the replacement mechanism and access charges than Track 3 carriers, despite having a lower average line density. *See id.* at 13-14. This means that Track 2 carriers in Wisconsin would effectively be penalized for being more efficient, since they can serve less dense areas at lower cost than Track 3 carriers in that state.

18 *See* The Missoula Plan: Policy and Legal Overview, Att. A, Exh. 1 (noting that "[m]any carriers may not be able to price their services to take full advantage of the Missoula Plan's higher [subscriber line charge] caps"); *see also infra* section III.B.2.

support from the universal service fund or a similar mechanism, which indirectly would be funded by end-users. CenturyTel customers write one check for their monthly telephone bill. SLC increases on the order proposed in the Missoula Plan[19] are hardly "modest" for a CenturyTel customer.[20] Unlike the BOCs, who charge SLCs below the current cap in many markets, smaller carriers such as CenturyTel have little or no flexibility under the proposed SLC caps to absorb proposed access reductions, resulting in significant increases to end-user rates. To illustrate, a $3.50 SLC increase would amount to a 14.7 percent increase in a CenturyTel Michigan market where local rates are already nearly $24 per month excluding the SLC; a $2.25 SLC increase would produce a 9.4 percent increase in the same market. This is on top of rates that in some states already are higher than in non-rural areas, due to the increased costs of serving rural markets.[21] Moreover, there has been widespread commentary that the Missoula Plan's authors *under*-estimate the size of the access recovery mechanism at $1.5 billion—all to be paid for by increases on the consumer's bill.

The Missoula Plan's authors provide little comfort on this score by speculating that consumers may obtain cost savings under the Plan.[22] None of the interexchange carriers that

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19 Specifically, Track 1 carriers are permitted to increase the SLC cap for primary residential (and single-line business) customers by a total of $3.50 over a four-year period ($0.75 in the first two years and $1.00 in the last two years), and perhaps by more if they achieve significant reductions in their access charges. *See* Missoula Plan Executive Summary at 7 & n.5. Track 2 and Track 3 carriers may increase the SLC cap by $2.25 over three years ($0.75 in each year). *See id.* at 7.

20 *See* The Missoula Plan: Policy and Legal Overview at 2.

21 For example, the Wisconsin Public Service Commission Staff estimates that Track 2 consumers already have the highest rates in the state. *See* Wisconsin PSC Staff Presentation at 11.

22 *See, e.g.*, The Missoula Plan: Policy and Legal Overview, Att. A, Exh. 1 ("*If* the Missoula Plan does spark more intense competition that forces carriers to lower their rates—as it should—then additional customers *may* see lower rates under the Missoula [P]lan than they do today.") (emphasis added).

stand to benefit the most from access charge reductions under the Plan has committed to passing through to its residential customers any of its projected savings. This should be a required and verifiable outcome of reform of this magnitude. Those savings could be substantial: CenturyTel estimates that, under the Missoula Plan, large carriers would stand to save several billion dollars in access revenues that will be shifted to SLCs and the restructure mechanisms. Rather than pass on these savings to residential end-users, such carriers are more likely to modify rates selectively in order to gain a competitive advantage and to benefit business customers in urban markets facing the greatest competition.[23] This approach is hardly fair to the rest of America, which also should benefit from reform.

Third, the Plan does not resolve the most glaring opportunities for regulatory arbitrage that exist in the current system. For example, it does nothing to address the practices of entities that use "virtual NXX" (or "VNXX") arrangements to avoid paying access charges. In fact, the Missoula Plan would encourage such practices by providing that all traffic will be compensated not according to the end-to-end nature of the call, which has been the basis for jurisdictional analysis for decades, but instead according to the calling and called telephone numbers.[24] In addition, compensation would continue to be paid to carriers that only receive ISP-bound traffic, even though there is nothing "reciprocal" about such compensation,[25] and the Commission had promised to phase out such payments by April 2004.[26] As a result, entities that

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23 *See* CenturyTel 2005 Comments at 10-11 (explaining how interexchange carriers enjoy near-total pricing flexibility and can be expected to direct rate reductions to certain customers as necessary).

24 *See* The Missoula Plan for Compensation Reform at 25.

25 *See id.* at 39-40 (providing that ISP-bound traffic, including VNXX traffic, "remains subject to the Commission's *ISP-Bound Traffic Framework*").

26 *See Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 ¶ 83 (2001) ("*ISP Remand Order*") (describing, in April 2001,

are not true local exchange carriers will be able to continue to perpetuate "market distortions" that the Commission has discouraged.[27]

Fourth, the Missoula Plan does not ensure a stable funding mechanism. The concept and viability of such an alternative funding mechanism such as the "Restructure Mechanism" is the lynchpin of the Missoula Plan. It is the basis on which the entire reform process is built. However, while noting the theoretical need for a mechanism to replace intercarrier payments, the Missoula Plan fails to describe its full contours.[28] It is unreasonable to ask carriers to shift over half of their revenue base to a fund that is not reasonably predictable even for the duration of the plan. Doing so would leave rural consumers in the lurch, a result decidedly at odds with the purposes of reform. Also, due to the artificially low termination rates proposed, the Missoula Plan actually fosters increased dependence by all ILECs on receiving revenues from some type of fund—the very basis of which the Commission is questioning today.[29] Those aspects of the funding mechanism that are actually described in the Missoula

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the Commission's adoption of a "three-year transition" toward "a more rational cost recovery mechanism"), *remanded*, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 1012 (2003); *id.* ¶ 98 (establishing a "three-year interim intercarrier compensation mechanism for the exchange of ISP-bound traffic").

27 *Id.* ¶¶ 5-6; *see also* CenturyTel 2005 Reply Comments at 28-29 (describing the competitive harms arising from VNXX); CenturyTel 2005 Comments at 23 (same).

28 *See, e.g.*, The Missoula Plan for Compensation Reform at 74 ("Restructure Mechanism dollars will be available to other carriers in circumstances to be determined in the future."); Missoula Plan Executive Summary at 12-13 (noting issues related to the restructure mechanism that are still being negotiated with state commissions).

29 *Federal-State Joint Board on Universal Service*, Order, 19 FCC Rcd 11538 (2004) (asking the Federal-State Joint Board on Universal Service to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers); *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005) (seeking comment with respect to the non-rural high-cost fund).

Plan—such as the portability of support,[30] and the inadequate size of the "Early Adopter Fund"[31]—merely exacerbate these problems.

In sum, the Missoula Plan sets forth a system that, if implemented, would sacrifice stability for complexity, and elevate the interests of the largest carriers and large enterprise customers above those of residential consumers and smaller markets, results that are antithetical to the goals of the Act. Moreover, the Missoula Plan's aggressive timetables comprise the sort of "convulsive regulatory change" that the Commission has deemed harmful to the public interest, particularly where, as here, the issues are complex and there is much disagreement about their resolution.[32]

III. SIMPLICITY AND DIRECTNESS SHOULD BE HALLMARKS OF CONSUMER-ORIENTED REGULATORY REFORM

CenturyTel supports a reform plan that is simple in its design, balanced in its approach, targeted in its goals, and protective of rural consumers. The Commission can best achieve meaningful reform and accomplish its policy goals by introducing changes incrementally.[33] Accordingly, the Commission should target a limited number of near-term

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30 The proposed rules for portability are contrary to the statutory goals of predictability and sufficiency of support, *see* 47 U.S.C. § 254, and would harm carriers of last resort and their customers. *See* The Missoula Plan for Compensation Reform at 79.

31 *See* The Missoula Plan for Compensation Reform at 76-77. Indeed, even the Missoula Plan's authors signal that the current level of the Early Adopter Fund may be insufficient. *See* Missoula Plan Executive Summary at 13 n.12 (stating that the Early Adopter Fund "will be $200 million or whatever greater amount the Commission finds" appropriate).

32 *Evaluation of the Syndication and Financial Interest Rules*, Report and Order, 56 Fed. Reg. 26242 ¶ 18 (1991) (in the context of the Commission's review of its syndication rules, finding that "prudent, balanced and incremental action" would "better serve the public interest" than "convulsive regulatory change," in light of the "complex and discordant record" before it), *vacated and remanded on other grounds*, *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043 (7th Cir. 1992).

33 *See, e.g.*, CenturyTel 2005 Comments at 44-45 (discussing the merits of an incremental approach to reform); CenturyTel 2005 Reply Comments at 2 (same).

objectives and announce a direct path for achieving them over a reasonable transition period within the framework of the plan. Such an approach would be more likely to avoid harm to consumers and to promote stability in the telecommunications sector going forward.

A. The Commission Should Move Immediately to Resolve Issues That Are Prerequisites to Further Reform.

Of the various issues that the Commission must confront in repairing its inter-carrier compensation rules, stabilizing the universal service high-cost fund and addressing phantom traffic should be top priorities. It is beyond dispute that preserving universal service is an essential element of intercarrier compensation reform.[34] The importance of support grows as consumers place increasing demands on networks. Yet wireless carriers have placed the high-cost fund under extreme pressure by taking support, much of it in the form of interstate common line support and interstate access support that was made available in the course of prior access reform proceedings (MAG and CALLS), though they do not have the same cost characteristics or carrier-of-last-resort obligations as incumbents.[35] The current contribution methodology has

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[34] *See Intercarrier Compensation FNPRM* ¶ 32 ("Preservation of universal service is another priority under the Act and we recognize that fulfillment of this mandate must be a consideration in the development of any intercarrier compensation regime."); *id*. ("Any proposal that would result in significant reductions in intercarrier payments should include a proposal to address the universal service implications, if any, of such reductions"); *see also* The Missoula Plan for Compensation Reform, App. B, Statement of Working Group on Reform of the Universal Service Contribution Methodology, at 88 ("A necessary component of intercarrier compensation reform is robust and sustainable universal service funding.").

[35] The unconstrained growth in competitive eligible telecommunications carrier (CETC) support is well documented. *See* CenturyTel 2005 Reply Comments at 7-9, 21-23 (summarizing criticisms of the contribution methodology and the absence of standards for CETC designations); CenturyTel 2005 Comments at 6-7, 35 (same). CenturyTel has documented markets in which as many as nine different wireless CETCs receive support for many more "lines" than there are households in the market. *See Federal-State Joint Board on Universal Service; Merits of Using Auctions to Determine High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Comments of CenturyTel, Inc., at 11-12 & n.22 (filed Oct. 10, 2006).

increasingly come under strain as well, spreading the burden of support across too few contributors.[36] The Commission therefore should take steps to address these weaknesses before proceeding to adopt comprehensive new inter-carrier compensation rules.[37]

1. The Commission Should Introduce Industry-Wide Traffic Identification Requirements.

There is widespread agreement that the problem of "phantom traffic"—which lacks complete or correct identification and thus cannot be properly billed—must be solved before any intercarrier compensation regime can work.[38] In fact, CenturyTel and other mid-sized carriers have been instrumental in formulating phantom traffic rules, which have garnered substantial support throughout the industry.[39] The phantom traffic proposal set forth in the Missoula Plan largely reflects this consensus.[40] That proposal calls for the immediate release of rules requiring that originating service providers deliver accurate calling party number and signaling information to intermediate and terminating providers, that intermediate providers transmit the information they receive, and that all carriers with a role in completing a call cooperate in resolving disputes about this information.[41] Industry standards-setting bodies could

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[36] *See generally Federal State Joint-Board on Universal Service*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002); *see also Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, FCC 06-94 (rel. June 27, 2006) ("*VoIP USF Order*").

[37] The Commission also will need to address the preservation of universal service in the context of longer-term reform, as discussed below. *See infra* section III.B.3.

[38] *See* CenturyTel 2005 Reply Comments at 3 (citing other commenters that discuss the need to solve problems relating to phantom traffic).

[39] *See* Letter from Karen Brinkmann to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Mar. 31, 2006).

[40] *See* Missoula Plan Executive Summary at 9-10.

[41] *See* The Missoula Plan for Compensation Reform at 61-63 (describing the Missoula Plan's "interim solution" for phantom traffic).

then continue to work toward the standardization of call tracking and billing records, and address new network uses.[42]

By adopting phantom traffic rules as a preliminary step, in advance of other reforms, the Commission can bring immediate financial stability to the industry and get a more accurate assessment of the amount of intercarrier traffic going over ILEC networks today. Phantom traffic has a two-pronged financial impact on ILECs: they are denied intercarrier compensation payments by carriers that "free ride" on their networks, and then they are forced to incur the additional costs associated with policing such traffic and making necessary investments to avoid network congestion for their legitimate customers. Correcting this problem now will not only ease these burdens and ensure that those generating traffic pay for their use of the networks, but will also provide valuable assurance of the Commission's commitment to enforcing intercarrier compensation arrangements, further encouraging industry acceptance of changes to cost-recovery. Moreover, addressing this issue as early as possible will ensure that *all* traffic passing over telecommunications networks today is being captured, allowing the Commission to assess as accurately as possible the impact of subsequent rate reform. There is true consumer benefit in moving swiftly to adopt enforceable phantom traffic rules before allowing SLC increases or other revenue shifts of the magnitude suggested in the Missoula Plan.

2. The Commission Should Stabilize Universal Service By Adopting a Numbers-Based Contribution Methodology and Establishing Mandatory Guidelines for ETC Designations.

The Commission is considering rules that would reduce intercarrier payments and potentially shift billions of dollars into a federal fund. Any such revenue shift—even if on the more limited scale that CenturyTel proposes below—will inevitably place greater pressure on

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[42] *See id.* at 56-61 (describing elements of long-term rules for phantom traffic).

universal service funding, raising the serious risk that rural consumers would lose access to valuable services such as high-quality voice and broadband. Solutions to both issues are already within the Commission's grasp.

The Commission has proposed changes to the contribution methodology to broaden the base of contributors, and has taken a first step in that direction.[43] A consensus has emerged supporting the replacement of the revenue-based approach with a numbers-based contribution methodology (or a hybrid approaching using numbers and revenues).[44] CenturyTel urges the Commission to conclude this rulemaking and adopt a contribution system that will be simple to administer and enforce.

CenturyTel also advocates making the Commission's ETC designation standards mandatory by granting the request for reconsideration filed by TDS Telecommunications and others sixteen months ago.[45] Alternatively, the total amount of money available to CETCs should be capped. The absence of mandatory guidelines has resulted in multiple wireless CETCs per market, reporting "lines" in excess of the households in the market. This now is the main

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[43] *VoIP USF Order* ¶ 21 ("declin[ing] to adopt, at this time, more fundamental changes to the entire universal service program or to the contribution methodology," and choosing instead to adopt "discrete interim reforms" while continuing to "address the challenges of fundamental reform").

[44] *See, e.g., id.* ¶ 21 n.84 ("Commenters generally supported telephone number-based proposals or hybrid proposals that would combine a telephone numbers-base system with a revenue- or connections-based component."); *see also* Remarks of FCC Chairman Kevin J. Martin, TELECOM 05 Conference, Oct. 26, 2005, at 2-3, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-261868A1.pdf (supporting the adoption of a numbers-based approach).

[45] *See Federal-State Joint Board on Universal Service*, Petition for Reconsideration, TDS Telecommunications *et al.*, CC Docket No. 96-45 (filed June 24, 2005); *see also Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371 (2005) (addressing minimum requirements for ETC designations).

cause of growth in the universal service high-cost fund, because there appears to be no limit to the number of CETCs states will designate in any market.[46]

Taking these widely supported actions would allow the Commission to stabilize the universal service fund *before* subjecting it to new pressures through inter-carrier compensation reform.[47] The portability aspects of the restructure mechanism proposed for Track 2 carriers will only add insult to injury if present CETC rules remain in effect.

B. The Process of Unifying Rates Should Begin With a Sensible Five-Year Plan.

Once the Commission has resolved these prerequisites to reform, it can proceed to address more fundamental aspects of intercarrier compensation. CenturyTel proposes that the Commission commence these efforts by establishing a five-year period within which to address some of the more pressing problems, with most of the changes occurring in the first three years. The limited reforms that CenturyTel describes below are so significant that they should be left in place for the remaining two years, allowing the Commission to assess their effects by such metrics as network investment, efficiencies, innovation and service offerings, consumer rates and subscribership levels, interconnection arrangements and intercarrier disputes. After that time, the Commission may determine whether further reform of intercarrier compensation is necessary, or whether the market is functioning sufficiently well without regulatory intervention. Because no one knows in advance the full impact these reforms will have, this approach would allow the

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[46] For example, as noted above, in one market CenturyTel faces competition from nine CETCs that receive identical per-line support without having to demonstrate identical costs. *See supra* note 35.

[47] Indeed, one of the Missoula Plan's failings is that it does not recognize this connection. For example, its authors expressly decline to take a position on the appropriate contribution methodology, despite acknowledging that the existing contribution rules require "substantial overhaul." The Missoula Plan: Policy and Legal Overview, Att. A, Exh. 1.

Commission to correct for any unforeseen adverse consequences, ensuring that reform does not leave consumers behind.

1. Terminating Rates Should Be Unified at a Reasonable Level.

CenturyTel believes that the Commission should focus the first phase of its reform on unifying terminating rates for all carriers at a reasonable level. CenturyTel has supported a unified rate structure as an important part of ending arbitrage of ILEC networks.[48] However, rural ILECs have admittedly high intrastate access charges in recognition of the need by state regulators to keep local rates affordable. It would be reckless to bring all rates to zero or close to zero in a matter of twenty-four months as the Missoula Plan proposes. First, such a drastic shift would have to be recovered through a significant increase in end-user charges, threatening affordability in many areas. Second, such a shift could jeopardize carriers' ability to invest in high-cost markets, particularly given the uncertainty of cost recovery under a new funding mechanism. Therefore, forcing inter-carrier charges down too quickly places an immediate burden on consumers with the very real risk of unintended consequences as traffic patterns shift. Inter-carrier compensation should be unified but at a level that continues to provide a meaningful revenue stream for the next five years.

CenturyTel supports a targeted reduction in terminating rates, premised on the division of all companies into two groups: (i) the mandatory price cap carriers and all non-ILEC service providers; and (ii) all other ILECs (covered rural telephone companies or CRTCs), regardless of their status as price cap or rate-of-return carriers.[49] CRTCs would choose a target

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[48] *See* CenturyTel 2005 Comments at 27-29; CenturyTel 2005 Reply Comments at 20-21 & n.83.

[49] Each of the available target rates would represent a blended rate that includes transport and termination charges.

rate from a range of four possible rate bands, based on what is most appropriate for each individual company:

- The current interstate rate levels based on an individual carrier's costs (available to Track 3 carriers under the Missoula Plan)
- $0.015
- $0.0102
- Track 1 rates

These rates should apply to interstate and intrastate terminating access, as well as non-access traffic that is "reciprocal." To the extent carriers already have agreed to a lower rate, that rate would continue in effect for the duration of the contract. CRTCs would be required to make their election by the end of an initial three-year period; for the last two years, rates should remain constant. This timeframe would give the Commission an opportunity to both lower rates and evaluate the financial impact of the unified termination rate on traffic flows and carriers' investment incentives, before deciding whether further change is warranted.

The unified rate should not apply to carriers that only terminate calls on behalf of customers that receive significantly imbalanced traffic. In this regard, CenturyTel urges the Commission to bring to an end the transitional compensation regime it previously established for ISP-bound traffic. It was always the Commission's intention that compensation for ISP-bound traffic be permitted only on an "interim" basis.[50] Indeed, the Commission found that permitting such compensation at all created "market distortions,"[51] but nevertheless decided that it was

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[50] *See, e.g., ISP Remand Order* ¶ 2.

[51] *Id.* ¶ 76.

"prudent" to allow reduced compensation *for a limited time* in order to avoid a disruptive "'flash cut' to a new compensation regime."[52] The industry has had over five years to adjust.

Leaving the ISP-bound traffic compensation regime in place imposes costs on network owners and creates market distortions. Contrary to the Commission's apparent belief,[53] dial-up Internet traffic is not declining in rural markets. Rather, there is extensive record evidence that, in rural markets, dial-up minutes continue to increase,[54] even as some customers switch to dedicated Internet access. Even the Missoula Plan's authors recognize this fact.[55] The market distortions that the Commission originally identified will persist and worsen if the Commission adopts a unified termination rate and continues to allow compensation be demanded for traffic that is significantly imbalanced. It is time for this outdated regulatory anomaly to come to an end.

Eliminating compensation to carriers with heavily imbalanced traffic would fulfill the Commission's original goal of ensuring that service providers recover their costs from the customers that drive those costs.[56] This result is particularly appropriate if carriers who operate and maintain full-service local exchange networks are implementing a uniform

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52 *Id.* ¶ 77.

53 *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, 19 FCC Rcd 20179 ¶ 20 (2004).

54 *See, e.g.*, Letter from Karen Brinkmann, Counsel to ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 96-98, 99-68, 01-92, 03-171, at 2 n.2 (dated Oct. 7, 2004).

55 The Missoula Plan for Compensation Reform, App. A, at 85 (stating that the Commission's "generalization" that dial-up ISP usage is decreasing "is not applicable in rural markets where the evolution from dialup to broadband will take place at a different pace" and that the "arbitrage opportunity" that arises when compensation is allowed for such traffic "remains detrimental both to the rural carriers and to the public interest in fostering the use of the Internet").

56 *See, e.g.*, *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 ¶ 11 (2001); *ISP Remand Order* ¶ 74.

terminating rate that is well below their current rate for access. Legitimate local exchange carriers should not be required to pay reciprocal compensation to entities that are not "exchanging" traffic at all, but merely inserting themselves into a revenue stream for pure profit. The present rules permitting entities that merely receive traffic to collect compensation create a huge impediment to unifying rates completely and reforming the present system.

2. Pricing Flexibility Must Be Part of Reform.

The Commission should give CRTCs the same pricing flexibility that the proposed Track 1 carriers enjoy. The Commission previously has acknowledged the competitive benefits of revamping pricing regulations in a manner that permits carriers to respond to market forces.[57] However, as CenturyTel previously has explained, carriers that compete directly with each other may be subject to different restrictions on the way in which they price their services, a disparity that puts certain carriers at a significant competitive disadvantage.[58] This is particularly important in connection with CRTC special access services. Unless CRTCs are afforded pricing flexibility with respect to such services, special access customers will likely migrate to switched access services when those rates decline as a result of the rate reductions described above, causing substantial losses in revenue.[59] Accordingly, the Commission should adopt pricing flexibility rules that would enhance the ability of CRTCs to respond to growing competition in their markets.[60]

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57 *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 ¶ 25 (2004); *see also* CenturyTel 2005 Reply Comments at 11-12; CenturyTel 2005 Comments at 36.

58 *See* CenturyTel 2005 Comments at 36-37; CenturyTel 2005 Reply Comments at 10-12.

59 Indeed, past reform plans have included special provisions enabling some carriers to mitigate their loss of special access revenues due to other aspects of intercarrier compensation reform. *See, e.g.*, Intercarrier Compensation and Universal Service Reform Plan at 59-60 ("ICF Plan"), attached to Letter from Gary M. Epstein & Richard

3. The Future of Universal Service Must Be Assured and Rate Increases Must Be Limited.

It may take time for the Commission to evaluate fully the effects of any intercarrier compensation reforms on consumers. However, the Commission can better ensure success on that front by taking certain actions that will preserve the universal availability of affordable communications services in the long term. As noted above, the customer writes one check for telephone service each month, so whether a charge is described as a "SLC" or a "universal service contribution" or a charge for "local service," the real customer impact can be measured only by the bottom line.

Unifying terminating rates at reasonable levels as described above will help achieve the goal of keeping service affordable. By moderating the size of the revenue shift that carriers must undertake, the Commission will limit the indirect expenses consumers may bear due to increases in the funding mechanism. Moreover, some of the beneficial changes to universal service proposed in the Missoula Plan can be adopted as proposed.[61] However, these benefits would be undermined if the SLC increases proposed in the Missoula Plan were adopted.

CenturyTel therefore proposes two additional actions that will preserve affordable rates for consumers. First, CenturyTel advocates that the Commission cap CRTC SLC increases at no more than $0.50 in any year over a three-year period, for a cumulative limit of $1.50 on any

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R. Cameron, Counsel for the Intercarrier Compensation Forum, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Oct. 5, 2004) (permitting rate-of-return ILECs to recoup lost special access revenues based on a particularized showing).

60 For instance, CenturyTel has long advocated an incentive regulation plan that would permit rate-of-return carriers to elect a modified form of price-cap regulation on a study area basis—a proposal on which the Commission sought and received comment several years ago. *See* CenturyTel 2005 Reply Comments at 10-11.

61 As noted above, CenturyTel supports the resizing of the high-cost fund and expanding the "safety valve" to provide additional compensation where CRTCs invest in acquired lines. *See supra* note 11.

line; further increases should be prohibited for the following two years, so the overall impact of this SLC cap increase can be evaluated. CenturyTel believes this proposal represents a significant and more rational savings for consumers compared to the Missoula Plan. These limits, in conjunction with the CRTC pricing flexibility described above, will lessen the impact of intercarrier compensation reform on consumers. Second, the Commission should make clear that the availability of revenue replacement funds is limited to those carriers that actually reduce their inter-carrier charges and thus merit the receipt of the replacement funds.[62] To ignore this limiting principle is to grant an additional windfall to carriers, such as CMRS carriers, that are not receiving any access charges today and thus would not lose such revenue through the unification and reduction of inter-carrier charges.

4. Interconnection Rules Should Be Simplified and Designed to Preserve Universal Service.

Finally, CenturyTel advocates the adoption of simple, uniform rules governing where carriers should interconnect with each other for the purpose of exchanging traffic. As under the ICF Plan, these rules should ensure that CRTCs are not required to bear out-of-network costs when exchanging traffic with non-rural carriers. The Commission should distinguish among wireline carriers using only one criterion: the market they serve. As noted above, this distinction would result in two general classes of carriers, rather than the arbitrary three "tracks" under the Missoula Plan: the mandatory price cap carriers should be in one class together with all non-ILEC providers; all other ILECs should be in the CRTC class because of their unique obligations as fully regulated carriers-of-last-resort in smaller, higher cost markets.[63]

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[62] *See* CenturyTel 2005 Reply Comments at 21-23.

[63] In contrast, as noted, CenturyTel—as well as other rural carriers that are as small as or smaller than CenturyTel—is deemed a "Track 2" carrier under the Missoula Plan because it operates price cap study areas.

This easily understood distinction has formed the basis for successful U.S. telecommunications regulation for decades. The mandatory price cap carriers enjoy economies of scale and scope that all other U.S. telecommunications providers lack. In addition, they are the only ILECs with truly national reach, as each is integrated with a major facilities-based, long-distance carrier. This will give them advantages under the new regime that regional and local carriers lack. To a great extent CLECs and VoIP providers enjoy economies comparable to those of the mandatory price cap LECs, because they carry no regulated costs or obligations and do not have to serve as carriers-of-last-resort, yet have facilities with far wider reach than the CRTCs. There is no need to further divide ILECs along lines that not only appear arbitrary but also that have the practical effect of penalizing midsized carriers and the customers they serve.

CRTCs should not be required to transport traffic outside any contiguous part of their service territory. This concept is consistent with the Commission's precedent that carriers should not be required to construct facilities beyond their respective service areas for the convenience of another carrier seeking interconnection.[64] Rules concerning the number and location of points of interconnection (POIs) should be established—for example, a requirement that all non-CRTCs exchange traffic with the CRTC at the end-office on the contiguous part of the service territory where the traffic originates or terminates, and a limit on the number of points in a CRTC's contiguous service area at which a non-CRTC may exchange traffic—such that CRTCs are not required to undertake new construction or to provide transport outside of any

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[64] *See* CenturyTel 2005 Comments at 41 & n.86 (citing *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 ¶¶ 636, 645-48 (2003), *vacated and remanded in part, affirmed in part*, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004)).

contiguous part of their service territory.[65] Such rules would mitigate the cost to CRTCs of exchanging traffic with non-CRTCs.[66]

Such safeguards are particularly essential given the rapid escalation in the use of "virtual NXX" (or "VNXX") numbers, which permit providers to disguise physically interexchange traffic as "local" and thus avoid paying otherwise applicable access charges. VNXX providers can offer their customers toll-free, inbound calling without having to compensate the originating carrier as would be done with either true 8YY or foreign exchange (FX) calling. Such arrangements impose substantial costs on rural carriers in particular, since they may be required to transport the call hundreds of miles outside their local exchange areas, and deal with increasingly congested toll trunks.[67] Because the proposed reforms are expected to undermine originating charges to a great extent, it is all the more critical that special interconnection arrangements be put in place to limit the costs that rural carriers incur when their customers originate VNXX calls.[68] All who impose costs on the public switched network should be required to pay for it.[69]

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65 *See* CenturyTel 2005 Comments at 40-42; *see also* ICF Plan at 19-21 (describing interconnection between CRTCs and non-CRTCs).

66 *See* CenturyTel 2005 Comments at 41.

67 *See, e.g.*, CenturyTel 2005 Reply Comments at 28-29; CenturyTel 2005 Comments at 4 n.4.

68 *See, e.g.*, *Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, Pursuant to Section 251(b)(1) of the Telecommunications Act of 1996*, Final Commission Decision, Case No. TO-2006-0299 (Mo. Pub. Serv. Comm'n June 30, 2006) (ordering that VNXX traffic be exchanged pursuant to bill and keep).

69 *See IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 ¶ 61 (2004) ("As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or a cable network.").

IV. CONCLUSION

For the reasons stated herein, CenturyTel supports an incremental approach to intercarrier compensation reform. Under CenturyTel's proposed framework, the Commission could bring immediate stability to the industry by facilitating the proper identification of traffic, adopting a stable contribution methodology for universal service, and making mandatory its guidelines for ETC designations. All of these changes can be accomplished within the general framework of the Missoula Plan. These actions will create a solid foundation on which to introduce intercarrier compensation reform. The Commission then should unify terminating rates over three years and set them at reasonable levels for the remainder of the five-year plan. Heavily imbalanced traffic should be excluded from intercarrier compensation. Universal service should be preserved by limiting the growth of CETC funding. And the Commission should guard against unnecessary cost increases in rural areas by crafting interconnection rules that fairly limit the expense of transport outside a carrier's service area. This measured approach would allow the Commission to assess the impact of its changes before contemplating further action that may burden consumers or deter network investment.

Respectfully submitted,

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October 25, 2006